

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Knight Analyst: Marion Mann DeJong Bill Number: SB 1222

Related Bills: AB 572 (1999) Telephone: 845-6979 Amended Date: 04/07/1999

Attorney: Doug Bramhall Sponsor:

SUBJECT: Shift Burden Of Proof

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 26, 1999, STILL APPLIES.

☒ OTHER - See comments below.

SUMMARY OF BILL

This bill would shift the burden of proof to the Franchise Tax Board (FTB) in court proceedings for factual issues, for penalties and for adjustments to income based on statistical information.

SUMMARY OF AMENDMENT

The April 7, 1999, amendments deleted the burden of proof provisions for all state agencies and replaced them with a burden of proof provision specifically for FTB. The amendments would generally conform to the federal burden of proof provisions and provide an exception to the shift in the burden for factual issues related to federal changes.

The April 7, 1999, amendments resolved several of the issues raised in the department's analysis of the bill as introduced February 26, 1999, by conforming to the federal burden of proof provisions. The Legislative History/Background and current law discussion in Specific Findings of the department's prior analysis still apply; the remainder of that analysis is replaced with the following.

EFFECTIVE DATE

This bill would be operative for court proceedings arising in connection with examinations commencing (or taxable periods or events beginning or, in the event there is no examination, occurring) after the effective date of this bill.

SPECIFIC FINDINGS

This bill would shift the burden of proof to FTB for factual issues in court

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department/Legislative Director Date

Johnnie Lou Rosas **4/21/1999**

proceedings if the taxpayer introduces credible evidence with respect to factual issues. For the burden of proof to shift, the taxpayer must:

- substantiate any item;
- keep records;
- cooperate with the FTB;
- exhaust all administrative remedies under California law, including any appeal to the BOE;
- meet net worth limitations (\$7 million) if not an individual taxpayer.

The burden of proof would also shift to the FTB (1) when the FTB adjusts income through the use of statistical information on unrelated taxpayers and (2) when penalties or additions to tax are imposed.

The burden of proof would not shift to the FTB for issues resulting from (1) a change or correction by the Commissioner of the Internal Revenue Service (IRS) or other officer of the United States or other competent authority or (2) an amended return filed with the Commissioner of the IRS.

Policy Considerations

This bill would raise the following policy considerations:

- Taxpayers may find that the federal provision does not provide a significant benefit due to the mechanics of when and how the burden of proof shifts from the taxpayer. Further, taxpayers, misunderstanding the burden of proof provision, could fail to keep necessary documents.
- Generally in civil cases the burden of proof is on the plaintiff, the party seeking corrective action. The taxpayer is the plaintiff in all California Superior Court actions. In addition, for tax cases the taxpayer has control of the records and documents necessary to ascertain the taxpayer's tax liability.
- This provision would not shift the burden of proof to the FTB for issues resulting from federal changes to continue the long-standing policy of reliance on federal information. If all conditions are satisfied by the taxpayer, the IRS would have had the burden of proof in any dispute arising from the federal audit.
- It is unclear whether the burden of proof would shift if a partnership's net worth is less than \$7 million but the net worth of a partner (for example, a corporate partner) exceeds \$7 million. This provision is unclear under the federal law also.

Implementation Considerations

Although this bill would require the taxpayer to maintain and present to FTB all records required under the law, current state law does not specifically require taxpayers to maintain records. Under current law FTB is not authorized to require most taxpayers to keep any records (books, papers, writings etc.), statements, returns or other information appropriate to determine the correct amount of tax reported on a tax return. Without

legislation to conform to the federal record-keeping requirements, taxpayers could shift the burden to the department by not maintaining records. Amendments conforming to the federal record-keeping requirements have been provided to the author's staff.

This bill could require FTB to engage in more extensive evidentiary gathering activities. Also, it may require personnel additions to the legal staff. Further, shifting the burden of proof to the department may require longer retention of records and increased departmental costs for storage.

FISCAL IMPACT

Departmental Costs

The departmental costs associated with this bill are unknown. The costs could increase, however, to the extent that additional supporting evidence would be required on all cases to support the state's position on any potential litigation cases.

Tax Revenue Estimate

Revenue losses for this bill in any given year are unknown. It appears that the Internal Revenue Service anticipates a negative revenue impact from self-assessed reporting, which could have an effect on self-assessed state taxes and departmental audit programs regardless of whether the state conforms in this area. Failing to conform to federal substantiation requirements is expected to have additional negative revenue impact. It is not possible to determine the number of cases in which the burden of proof would shift to the Franchise Tax Board to substantiate assessments in court.

BOARD POSITION

Pending.